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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,040	02/20/2002	Richard G. Dalgetty	XENOP008/PXE-037.US	8481
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BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER DIXON, ANNETTE FREDRICKA	
			ART UNIT 3771	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/081,040	<b>Applicant(s)</b> DALGETTY ET AL.	
	<b>Examiner</b> Annette F. Dixon	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5-10,12,13,23-26,28-30,39,40,42-50 and 54-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-10,12,13,23-26,28-30,39,40,42-50 and 54-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/16/07</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action is in response to the request for continued examination filed on October 31, 2007. Examiner acknowledges claims 1, 5-10, 12, 13, 23-26, 28-30, 39, 40, 42-50, and 54-61 are pending in this application, with claims 1, 10, 23, 39, 42, 45, 48, and 60 having been currently amended, claims 2-4, 11, 14-22, 27, 31-38, 41, 51-53, and 62-64 having been cancelled.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-13, 23-26, 28-30, and 39-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (6,776,158) in view of LaBauve (4,520,808).

As to Claims 1, 39, 42, and 51, Anderson discloses a gas delivery system (1) capable of delivering an anesthesia gas to a plurality of gas outlets, the system (1) comprising: an oxygen inlet (represented by the oxygen exiting the source, element 2, into the anesthesia gas source, element 9) that receives oxygen from an oxygen source; a pressure regulator (3) having an inlet that receives oxygen from the oxygen inlet and having an outlet that provides oxygen at a lower pressure; an anesthesia gas source (9) having an inlet coupled to receive low pressure oxygen from the outlet of the pressure regulator (3) and capable of adding anesthesia gas to the low pressure oxygen (Column 4, Lines 30-45); a first gas delivery outlet (8a) coupled to a gas delivery device, and a second gas delivery outlet (8b) coupled to an induction chamber (92) and capable of providing anesthesia gas and oxygen to the induction chamber (Column 7, Lines 23-54). (Figure 1). Yet, Anderson does not expressly disclose the particulars of the first gas delivery outlet to be able to deliver gas to a plurality of living specimens. However, at the time the invention was made the particular structure of the first gas delivery outlet

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device was well known. Specifically, LaBauve teaches a gas deliver device for holding multiple laboratory animals horizontally disposed along a front face of the gas delivery device and capable of simultaneously providing anesthesia gas and oxygen to the multiple laboratory animals for the purpose of ensuring the laboratory animals are exposed to a uniform concentration of the anesthesia gas. (Abstract and Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Anderson to include the particular structural elements of the first gas delivery outlet device, as taught by LaBauve to enable uniform distribution of anesthesia gas to the laboratory animals.

As to Claim 2, the system of Anderson as modified by LaBauve discloses a first gas delivery outlet comprising an outlet port (38). Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 3, the system of Anderson as modified by LaBauve discloses a second gas delivery outlet comprising an outlet port (25). Anderson discloses a flow

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control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 4, Anderson discloses a flow control device (11), yet does not expressly disclose the positioning of the flow control device between the anesthesia gas source and the outlet port. However, at the time the invention was made the structural orientation of a flow control device between the anesthesia gas source and the outlet port was known in the art for the purpose of enabling the flow rates of the anesthesia gas to be specifically controlled and modified depending on the type and amount of animals being anesthetized. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the location of the flow control, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

As to Claim 5, Anderson discloses the gas delivery system is capable of producing a flow rate between 0 L/min to 5 L/min. (Column 11, Lines 60-65).

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As to Claims 6-8, and 28-30, Anderson discloses the gas delivery system contains a gas scavenger to enable the collection of anesthesia gas to be scavenged from the induction chamber. (Column 7, Line 55 thru Column 8, Line 20).

As to Claim 9, Anderson discloses a purge inlet (24) capable of providing oxygen to the induction chamber. (Column 7, Lines 58-63).

As to Claims 10, 40, 43, 46, and 48, Anderson discloses the gas delivery device comprises an inlet for receiving anesthesia gas and oxygen (7) and at least one channel (10) for communicating anesthesia gas and oxygen between the inlet and the multiple specimen interfaces. Further, LaBauve teaches the use of individual receptacles (12) sized to fit the mouse wherein the head portion of the receptacle has a conical nose-piece (Figure 3), sized to fit the nose of the mouse, and a conical structure (22) to enable uniform discharge of gases and to prevent the animal from gnawing on the device. (Column 3, Lines 40-46 and Column 4, Lines 4-18).

As to Claims 12, 24, 25, 44, 49, 50, and 54-59, the system of Anderson and LaBauve discloses the disposable sleeves having a frustroconical shape. Specifically, LaBauve teaches the use of individual receptacles (12) sized to fit the mouse wherein the head portion of the receptacle has a conical nose-piece (Figure 3), sized to fit the nose of the mouse, and a conical structure (22) to enable uniform discharge of gases and to prevent the animal from gnawing on the device. (Column 3, Lines 40-46 and Column 4, Lines 4-18). Further, LaBauve teaches the receptacles (12) may be removed. Intrinsically, the ability of the these receptacles to be removed from the gas

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delivery system gives way for the receptacles to be disposed of and replaced with another receptacle unit. Thereby making the receptacle sleeve units disposable.

As to Claim 13, Anderson discloses the flow from the inlet for receiving anesthesia gas and oxygen (7) are substantially equal by the location of the flow regulator (11).

As to Claim 23, 26, and 45, the system of Anderson and LaBauve discloses the gas delivery system has a opaque light barrier. Specifically, LaBauve teaches the gas delivery apparatus can made of numerous materials based upon the desires of the designer including glasses, plastics, and metal alloys. (Column 4, Lines 57-60). Intrinsically, the ability of the device to be made of a metal equates the ability of the device to operate as having an opaque light barrier.

As to Claim 47, the system of Anderson as modified by LaBauve discloses the laboratory animal holder device are separate and distinct, yet does not expressly disclose the thickness of the light barrier. However, at the time the invention was made the thickness of the light barrier would be dependant on the material used in the construction of the holder device. (Column 4, Lines 49-60). Therefore, it would have been obvious to one having ordinary skill in the art to modify the device of Anderson and LaBauve in a spatially arranged orientation that would prevent heat build-up and prevent the animals from becoming anxious within the enclosed environment.

As to Claims 60 and 61, the system of Anderson as modified by LaBauve as addressed in claim 1 recites all the recited limitations of the claims including the mouse interface capable of holding at least a part of the head of the mouse (Figure 3, Column



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4, Lines 4-18) and a scavenging system having a plurality of holes (18) disposed around the mouse interface for removing the anesthesia gas from the exposure site (14) to the exhaust site (16) and out to a vacuum or scavenging source via the outlet (38).

(Figures 1-3).

### ***Response to Arguments***

6. Applicant's arguments filed November 16, 2007 have been fully considered but they are not persuasive. Applicant asserts the prior art made of record does not teach or fairly suggest: 1) multiple living specimen interfaces horizontally disposed along a front face of the gas delivery device, 2) opaque light barrier, 3) a buffer volume, 4) a disposable member, and 5) providing anesthesia gas and oxygen in a first direction and then drawing anesthesia gas from a second direction opposite the first. Examiner respectfully disagrees with Applicant's assertions.

Regarding Applicant's first assertion, there are no structural characteristics that prevent the device of LaBauve to be oriented in the recited fashion providing the animal holding receptacles (12) in a horizontally displaced orientation along the front of the gas delivery system. Applicant is reminded, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, as gases are being delivered to the mice, the device is fully capable of operating whether upright on its side.

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Regarding Applicant's second assertion, LaBauve teaches the gas delivery apparatus can be made of numerous materials based upon the desires of the designer including glasses, plastics, and metal alloys. (Column 4, Lines 57-60). Intrinsicly, the ability of the device to be made of a metal equates the ability of the device to operate as having an opaque light barrier.

Regarding Applicant's third assertion, from a close reading of Applicant's specification, Applicant discloses a buffer volume is created by a channel having a larger cross section than an inlet port. Further, Applicant discloses the buffer volume is utilized to reduce the flow rate inconsistencies and fluctuations to the mice. (Page 16, Lines 12-20). LaBauve teaches an inlet port 20 connected to a conical structure (22) for the purpose of providing a uniform discharge of gases to the mice. Intrinsicly, the function of LaBauve's structure is capable of performing the same function as Applicant's invention and thusly creates a buffer volume. Applicant is reminded, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Applicant's fourth assertion, LaBauve teaches the receptacles (12) may be removed. Intrinsicly, the ability of these receptacles to be removed from the gas delivery system gives way for the receptacles to be disposed of and replaced with another receptacle unit. Thereby making the receptacle sleeve units disposable.

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Regarding Applicant's fifth assertion, LaBauve teaches the gas is delivered in a first direction (from the source in nose of the mouse) and removed in a second direction (from the nose of the mouse out to the vacuum). (Figure 1). Intrinsically, the device of LaBauve is capable of providing the directionality of the gases to be administered and to be removed from the mouse in opposite manner. Applicant is reminded, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In light of the aforementioned reasoning, the rejection of the claims has been maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

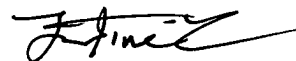
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Annette F Dixon  
Examiner  
Art Unit 3771



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1/4/08